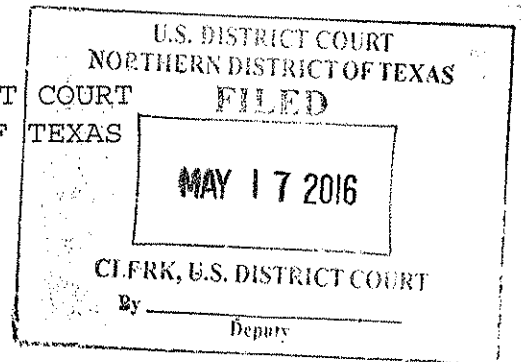


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION



BOBBY JOE LEE,

Petitioner,

v.

LORIE DAVIS, Director,¹
Texas Department of Criminal
Justice, Correctional
Institutions Division,

Respondent.

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No. 4:16-CV-353-A

MEMORANDUM OPINION
and
ORDER

This is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by petitioner, Bobby Joe Lee, a state prisoner confined in the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ), against Lorie Davis, Director of TDCJ, respondent. After having considered the pleadings, state court records in petitioner's pending habeas action, and relief sought by petitioner, the court has concluded that the petition is repetitive and should be summarily dismissed as a an abuse of the writ.

¹Effective May 4, 2016, Lorie Davis replaced William Stephens as director of the Correctional Institutions Division of the Texas Department of Criminal Justice. Pursuant to Federal Rule of Civil Procedure 25(d), Davis is automatically substituted as the party of record.

I. Factual and Procedural History

On September 2, 2010, petitioner was convicted of two theft offenses and one criminal mischief offense in the 432nd Judicial District Court of Tarrant County, Texas, in cause numbers 1181071D, 1181069D, and 1181073D, respectively, and was sentenced to 50 years' confinement for each offense. By way of this petition, petitioner challenges his conviction in cause number 1181069D. Pet. 2, ECF No. 1. Petitioner has filed a previous petition challenging the same conviction and raising the same or similar claims in Civil Action No. 4:14-CV-928-A, which remains pending at this time. The court takes judicial notice of the pleadings and state court records filed in petitioner's pending federal habeas action.

II. Successive Petition

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts and 28 U.S.C. § 2243 both authorize a habeas corpus petition to be summarily dismissed.² The Fifth

²Section 2243, governing applications for writ of habeas corpus, provides:

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, *unless it appears from the application that the applicant or person is not entitled thereto.*

28 U.S.C. § 2243 (emphasis added).

Circuit recognizes a district court's authority under Rule 4 to examine and dismiss frivolous habeas petitions prior to any answer or other pleading by the state. *Kiser v. Johnson*, 163 F.3d 326, 328 (5th Cir. 1999).

A successive petition is one that raises a claim that was or could have been raised in an earlier petition or otherwise constitutes an abuse of the writ. See *Crone v. Cockrell*, 324 F.3d 833, 837 (5th Cir. 2003); *In re Cain*, 137 F.3d 234, 235 (5th Cir. 1998). Petitioner's attempt to file another habeas petition pursuant to § 2254 challenging his conviction in cause number 1181069D prior to the disposition of his pending habeas petition constitutes an abuse of the writ. In light of petitioner's history of repetitive and frivolous filings in Civil Action No. 4:14-CV-928-A, he is warned that any future attempts of a similar nature will be found to be an abuse of the writ and will lead to the imposition of sanctions, including monetary penalties, a bar

Rule 4 of the Rules Governing Section 2254 Cases provides:

The original petition shall be promptly presented to a judge of the district court in accordance with the procedure of the court for the assignment of its business. The petition shall be examined promptly by the judge to whom it is assigned. *If it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the petitioner to be notified.*

Rules Governing Section 2254 Cases, Rule 4 (emphasis added).

to filing any further motions or lawsuits in this court, and/or other impediments.

For the reasons discussed herein,

It is ORDERED that petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be, and is hereby, dismissed as repetitive and an abuse of the writ. It is further ORDERED that a certificate of appealability be, and is hereby, denied.

SIGNED May 17, 2016.



JOHN MCBRYDE
UNITED STATES DISTRICT JUDGE